

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6273-CR-HUCK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ARIEL A. HERNANDEZ,

Defendant.

GOVERNMENT'S RESPONSE TO THE DEFENDANT'S MOTION FOR PARTIAL
TRIAL TRANSCRIPTS AND SENTENCING HEARING TRANSCRIPTS

COMES NOW the United States of America, by and through the undersigned Assistant United States Attorney, and hereby files its Response to the defendant Ariel Hernandez' Motion for Partial Trial Transcripts and Sentencing Hearing Transcripts (DE 31-2).

On January 9, 2006, defendant filed his Motion to Vacate, Set Aside or Correct Sentence pursuant to Title 28, United States Code, Section 2255 (DE 1).¹ The case was assigned to Magistrate Judge Patrick A. White (DE 3). On August 23, 2006, Magistrate Judge White issued his Report and Recommendation urging denial of the defendant's Motion (DE 15). On September 18, 2006, this Court issued its Final Judgment adopting Magistrate Judge White's findings, denying the defendant's Motion to Vacate, denying all of the defendant's pending motions as moot, and closing the case (DE 18). On September 28, 2006, the defendant filed motions for reconsideration and for a certificate of

¹That case was assigned Southern District of Florida case number 06-60029-CIV-HUCK. All references to docket entries set forth herein are made to that civil case file. This Court's Order to Respond was issued under the defendant's underlying criminal case number. Consequently, the instant Response is being filed under that criminal case number as well.

appealability (DE 20, 21), which were denied by this Court on October 31, 2006 (DE 27, 28). The defendant filed a Notice of Appeal of this Court's Final Judgment (DE 21). On January 16, 2007, the Eleventh Circuit entered its Order denying defendant's application for a Certificate of Appealability, finding that "he has failed to make a substantial showing of the denial of a constitutional right" (DE 32). On January 18, 2007, the defendant filed the instant Motion, asserting that he "is currently appealing his sentence and conviction and needs these transcripts" (DE 31-2, p. 3). On February 5, 2007, the defendant filed a motion seeking reconsideration of the Eleventh Circuit's Order denying his Motion for Certificate of Appealability, and that Motion remains pending before the Court of Appeals.

Although the defendant's appeal had already been denied by the time he filed the pending Motion, given that his Motion for Reconsideration of that decision remains pending before the Eleventh Circuit, and in light of the fact that the documents being sought by the defendant were somewhat readily available to the undersigned, simultaneously with the filing of the instant Response, the government is forwarding to the defendant via U. S. Mail copies of the following transcripts which he has requested:

1. Trial day 1 (November 19, 2001);
2. Trial day 2 (November 20, 2001);
3. Trial day 3 (November 21, 2001);
4. Trial day 4 (November 26, 2001); and
5. Sentencing Hearing (April 23, 2002).²

Therefore, in light of the above and foregoing, the government respectfully submits that the

²Contrary to the assertions in the defendant's Motion, his sentencing commenced and was completed on that day.

defendant's pending Motion should properly be denied as moot.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

This is to certify that a copy of the within and foregoing response, along with copies of the above-described documents, have been forwarded by U S. mail on this 28th day of February 2007 to: Ariel A. Hernandez, Prisoner No. 04-61011, Pre-Trial Detention Center, 1321 N.W. 13th St., Miami, FL 33125.

/s/ Lawrence D. LaVecchio
LAWRENCE D. LAVECCHIO
Assistant United States Attorney